IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 162 of 1992

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

JAYESHKUMAR GOVINDRAM PUJARA

Appearance:

MR ND GOHIL, APP for appellant

NOTICE SERVED for Respondent No. 1, 2, 3, 4, 5, 6

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 28/04/2000

ORAL JUDGEMENT

1. This is an appeal under section 378 of the Criminal procedure Code by the State of Gujarat through the Food Inspector, Food and Drugs Control, Gandhinagar, challenging the judgement and acquittal passed by the learned JMFC, Surendranagar in Summary Case No.951/91, whereby the respondents-original accused were acquitted of the charges levelled against them under section 7(1)

and 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954. The prosecution case was that the Food Inspector-complainant had collected a sample of chilly powder from the shop of the accused, sent the same for analysis to the chemical analyser and the said sample was found to be substandard inasmuch as the same was said to contain pink and red oil soluble coal-tar dye, and hence the prosecution.

2. The learned Magistrate, after appreciating the evidence on record was pleased to acquit the accused of charges levelled against them on various grounds and findings of fact recorded on the basis of the evidence on record.

3. The law laid down by the Supreme Court as to how and in what manner the High Court should deal with appeals against orders of acquittal is by now well settled and does not require a lengthy discussion. Suffice it to say that the High Court in appeals from acquittal should not lightly interfere, and a mere contention that there has been a misinterpretation of the evidence on the part of the trial court is not sufficient to justify interference. The appellate court may interfere only where the acquittal is based on no evidence or is based upon totally ignoring the relevant and material evidence on record. On the facts of the case I do not find such to be the case.

4. Only a few salient features require to be noted. The basis of the acquittal is the finding of fact that the mandatory provisions of section 10(7) and section 11 of the Act read with Rules 14, 15 and 16 have not been complied with.

5. Learned Magistrate has taken note of the fact that even the complainant himself in his deposition at Exh.5, at any point of time during the deposition, does not assert that the bottles in which the sample was taken were either cleaned by him or cleaned in the presence of panchas.

6. Furthermore, it is the prosecution case that it was the complainant's evidence that the red chilly powder was in a large sealed packing which was broken open to obtain the sample and that the sample was taken with the aid of a spoon. It is nowhere in evidence that the spoon used for taking the sample from the larger sealed packing was either cleaned earlier or just prior to taking the sample. As against this it is the specific case of the accused that this spoon which was used for taking the

sample out of the larger sealed bag, was for general purpose used by the shopkeeper, and this spoon was also used to be casually borrowed by shopkeepers having shops adjacent to that of the accused, and that therefore, the spoon was likely to be unclean or contaminated particularly since the spoon was admittedly not cleaned just prior to the taking of the sample. This is obviously a violation of Rule 14 of the Rules framed under the Act.

7. It also requires to be noted that even the deposition of the panch supports the defence version, and contradicts the prosecution version. It is brought out in the cross-examination of the panch Kishorekumar Govindram that he had not seen the spoon for taking the sample either with the complainant or in the shop of the accused, and that he was not aware as to when and how the complainant used this spoon to take the sample. This panch further deposes that the scales used for weighing the samples as also the weights used were old and dirty, tarnished and rusted and that apparently the scales were used for weighing some coloured material.

8. It is also obvious that the panchnama has not been signed by accused no.1, although according to the complainant, this accused was present at that point of time. It is not the case of the prosecution and not found from the deposition of the Food Inspector that the accused no.1 was asked to sign the panchnama, but he refused. In fact in this context as per the evidence of the panchas, the Food Inspector had taken the signatures of the panchas on blank sheets of paper and that too by pressurising them.

9. It is also relevant to note that the spoon with which the samples were taken from the larger sealed bag finds no mention in either the complaint or the panchnama and consequently there is no averment to the effect that the said spoon was clean and dry and free from odour and/or the said spoon was cleaned just prior to taking of the sample.

10. The same principle would apply to the bottles in which the samples were taken with the aid of the spoon. It is neither averred nor established that the bottles in which the samples were taken were clean and dry at the time of taking the samples, and that the said bottles were cleaned just prior to the taking of the sample.

11. It is also pertinent to note that the learned Magistrate has given benefit of doubt to the accused also

on another independent point viz. regarding the notices given under section 13(2) of the Act to the accused to inform them of their right to obtain a re-analysis, which are alleged to have been served by the postal slips at Exhs.29 to 34. However, there is a serious controversy raised by the accused to the effect that the said notices were not served upon them at all. This contention raised on behalf of the accused requires serious consideration for the simple reason that the signatures on the AD slips are not established to be those of the accused. Even the complainant himself admits in his cross-examination that he is not aware as to who had signed those acknowledgment slips. The learned Magistrate has, after examining the original receipts, expressed an opinion that the same appears to have been signed by some other person and not by the accused. Obviously, therefore, if the accused are denied an opportunity of obtaining a re-analysis by non-service of the notice as required under section 13(2), the benefit of doubt must go to the accused.

12. It is also pertinent to note that in the cross-examination of the Food Inspector he has admitted that so far as Exh.22 is concerned, the notice given to the trader for the purpose of taking the sample, does not make any reference to "Manek Brand Agmark" (Chilly Powder)". No manufacturing licence has been produced and the said Inspector admitted that he is not aware whether there is any such licence or not and the number of such licence if any. When these facts are seen in juxtaposition with the report at Exh.17, learned Magistrate has rightly observed that the report does not refer to analysis of "Manek Brand Agmark chilly powder". The Learned Magistrate was, therefore, correct in his observation to the effect that it is not established by conclusive evidence that the sample taken from the shop of the accused was precisely the same sample which was the subject matter of the analysis report i.e. whether the analysis report pertains to the same sample taken from the shop of the accused.

13. These are only some of the salient features on the basis of which the learned Magistrate thought it fit to give benefit of doubt to the accused. On the basis of the evidence on record I am satisfied that the view expressed by the learned Magistrate is just and reasonable, and on the state of evidence on record it is not possible to come to a conclusion that the prosecution has made out a case beyond any reasonable doubt.

14. I, therefore, find that there is no substance in the present appeal and the same is accordingly dismissed.

15. The Registry is directed to intimate the result of this appeal to opponent nos.5 and 6.

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